

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

MICHAEL ANDREWS,

)

8:08CV312

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Plaintiff,

)

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v.

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**MEMORANDUM  
AND ORDER**

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STATE OF NEBRASKA AND  
OMAHA POLICE OFFICER VON  
BEHREN, et al.,

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Defendants.

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This matter is before the court on its own motion. This court conducted an initial review of Plaintiff's Complaint on September 11, 2008. (Filing No. [6](#).) In that Memorandum and Order, the court dismissed several of Plaintiff's claims for failure to state a claim upon which relief may be granted, but allowed Plaintiff leave to file an amended complaint. (*Id.*) In particular, Plaintiff was granted leave to amend his claims against Defendant Diehm and to amend his Eighth Amendment safety claims. (*Id.*) The court warned Plaintiff that failure to amend these claims properly would result in dismissal of those claims.

Plaintiff filed an Amended Complaint on September 25, 2008. (Filing No. [7](#).) However, Plaintiff's Amended Complaint still fails to allege that Defendant Diehm was personally involved in, or had direct responsibility for, any of the actions complained of. Further, the Amended Complaint fails to allege an Eighth Amendment claim against any Defendant. In light of this, this matter will only proceed against Defendant Von Behren on Plaintiff's Fourth Amendment claim. Service is therefore warranted as to that claim only.

IT IS THEREFORE ORDERED that:

1. Plaintiff's claims against Defendant Diehm and Plaintiff's Eighth Amendment claims are dismissed in accordance with this Memorandum and Order and the court's September 11, 2008 Memorandum and Order.

2. Plaintiff's Fourth Amendment claim against Defendant Von Behren may proceed and service is now warranted as to that claim only.

3. To obtain service of process on the remaining Defendant, Plaintiff must complete and return the summons form which the Clerk of the court will provide. The Clerk of the court shall send ONE (1) summons form and ONE (1) USM-285 form to Plaintiff together with a copy of this Memorandum and Order. Plaintiff shall, as soon as possible, complete the forms and send the completed forms back to the Clerk of the court. In the absence of the forms, service of process cannot occur.

4. Upon receipt of the completed forms, the Clerk of the court will sign the summons form, to be forwarded with a copy of the Amended Complaint to the U.S. Marshal for service of process. The Marshal shall serve the summons and Amended Complaint without payment of costs or fees. Service may be by certified mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal. The Clerk of the court will copy the Amended Complaint, and Plaintiff does not need to do so.

5. Fed. R. Civ. Pro. 4 requires service of a complaint on a defendant within 120 days of filing the complaint. However, because in this order Plaintiff is informed for the first time of these requirements, Plaintiff is granted, on the court's own motion, an extension of time until 120 days from the date of this order to complete service of process.

6. Plaintiff is hereby notified that failure to obtain service of process on a defendant within 120 days of the date of this order may result in dismissal of this matter without further notice as to such defendant. A defendant has twenty (20) days after receipt of the summons to answer or otherwise respond to a complaint.

7. The Clerk of the Court is directed to set a pro se case management deadline in this case with the following text: “**April 8, 2009:** Check for completion of service of summons.”

8. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court. Plaintiff shall keep the court informed of his current address at all times while this case is pending. Failure to do so may result in dismissal.

December 9, 2008.

BY THE COURT:

*s/Richard G. Kopf*  
United States District Judge